IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5785 of 2007()

CRIME NO.408/07 OF VIZHINJAM POLICE STATION

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: PETITIONER - ACCUSED

MINI, W/O.SUTHAN, AGED 30 YEARS,
RESIDING AT D.R.SADANAM, VATTAVILA,
MULLOOR, VIZHINJAM, KOTTUKAL P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENTS: COMPLAINANT AND INVESTIGATING OFFICER

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1. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR
AT THE HIGH COURT OF KERALA AT ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
VIZHINJAM POLICE STATION,
VIZHINJAM, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5785 OF 2007

Dated this the 3rd day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the daughter-in-law of the victim. She is alleged to have attacked her mother-in-law with a chopper on account of prior animosity. A crime has been registered. Investigation is in progress.

2. The victim and her husband had an item of residential property. They had executed a settlement deed in favour of their only son – the husband of the petitioner reserving for themselves a life estate. The husband of the victim expired three years back. It is alleged that the daughter-in-law – the petitioner, has been compelling the mother-in-law to leave the house. In connection with this request, there were attacks on her also. The alleged incident had taken place on 8/8/07. It

is alleged that the petitioner attacked her mother-in-law with a chopper and caused injuries to her. The allegations are raised under Sec.308 of the IPC. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Fanciful allegations are raised against the petitioner. The averments in the petition do not tally with the information available in the discharge summary which was issued from the Medical College Hospital to which she was referred for treatment from a hospital where she was initially admitted. Earlier also, there was an attempt to falsely implicate the petitioner. The court had granted regular bail to the petitioner on that occasion. The mother-in-law, because of her animosity against the daughter-in-law, is raising false allegations against her, submits the learned counsel for the petitioner.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances which would warrant or justify the invocation of the jurisdiction under Sec.438 of the Cr.P.C. This petition may, in these circumstances, be dismissed and the petitioner may be directed to surrender before the Investigating Officer or the

learned Magistrate and seek regular bail, submits the learned Public Prosecutor.

5. In the nature of the allegations and contentions, the learned Public Prosecutor was requested to place the Case Diary for my perusal. I have anxiously gone through the Case Diary.

6. Having considered all the relevant inputs, I find merit in the submission of the learned Public Prosecutor that there are no features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. I do not think it necessary for me at this stage to weigh the materials in golden scales to decide whether the offence alleged would be only one under Sec.324 of the IPC or would constitute an offence under Sec.308 of the IPC. Suffice it to say that I have gone through the entire materials collected so far. I have taken note of the nature and gravity of the allegations. I have taken note of the nature of the weapon used. I have taken note of the nature of the injuries suffered. I have also taken note of the entire background of the case. I am not at all persuaded to agree that this is a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioner. This, I am satisfied, is a fit case where the petitioner must appear before

the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail. Needless to say, totally different considerations will weigh the court while considering the application for regular bail. At that stage, the petitioner can attempt to seek the invocation of the compassion of law under Sec.437 of the Cr.P.C. in favour of an accused of the female species. It is for the learned Magistrate to consider the regular bail application. It is not necessary for me to make any further observations.

7. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R. BASANT, JUDGE)

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